

Conflicts of Interest

Community Development
Program

Department of Neighborhood and
Business Development

What is Conflict of Interest

- ▶ Black's Law Dictionary defines a "conflict of interest" as:
" a real or seeming incompatibility between a person's private interests and his or her public or fiduciary duties."

Conflicts of Interest

- ▶ CDBG
- ▶ HOME Program

Conflicts of Interest

- ▶ Two Types:

Procurement
Non-procurement

Procurement Conflicts of Interest

- ▶ Procurement of:
 - Supplies
 - Equipment
 - Construction
 - Services

Procurement Conflicts of Interest

- ▶ Procurement by State, City and Sub. Grantees:
 - 24 CRF Section 85.36
- ▶ Procurement by nonprofit organizations (recipients) and Sub. Recipients:
 - 24 CRF Section 84.42

Decision Point

- ▶ Four Possibilities:
 - CDBG Procurement
 - CDBG Non-procurement
 - HOME Procurement
 - HOME Non-procurement

Non-Procurement Conflicts

- ▶ What Regulations and Rules Apply?
 - CDBG
 - 24 CFR Section 570.611
 - HOME
 - 24 CFR Section 92.356

CDBG Conflicts

- ▶ 24 CFR Section 570.611
 - No person who is employee, agent, consultant, officer or elected or appointed official of recipient or subrecipient who:

CDBG Conflicts

- ▶ Exercises any functions or responsibilities with respect to CDBG activities,
- ▶ Is in a position to participate in the decision making process,
- ▶ Or gains inside information with regards to such activities may:

CDBG Conflicts

- ▶ Obtain a financial interest or benefit from a CDBG activity
- ▶ Have a financial interest in any contract with respect to a CDBG activity or its proceeds
- ▶ For themselves or those they have business or immediate family ties with

CDBG Conflicts

- ▶ HUD may grant exception to Conflict of Interest on a case-by-case basis.
- ▶ Recipient must request an exception in writing.

Exceptions

- ▶ **Threshold Requirements:**
 - Public disclosure of conflict
 - Opinion of the City's attorney that exception does not violate State or local law

Exceptions – 7 Factors

1. Significant cost benefit or essential expertise to project
2. Opportunity for open competitive bidding or negotiation
3. Person affected

Exceptions – 7 Factors

- Member of low or moderate income class of persons intended to be beneficiaries of the assisted activity
 - Exception will permit such persons to receive same benefits as the class
4. Person affected has withdrawn from his or her functions or responsibilities, or decision making process with respect to the assisted activity

Exceptions – 7 Factors

5. Interest or benefit was present before affected person was in the “conflicting” position
 6. Undue hardship to recipient or person affected when weighed against public interest served by avoiding the prohibited conflict
 7. Any other relevant considerations
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HOME Conflicts

- ▶ 24 CFR Section 92.356
- ▶ Similar to CDBG
 - What constitutes conflict
 - Persons covered
- ▶ Participating jurisdiction must make written request for exception

HOME Conflicts

- ▶ Threshold requirements for exception similar to CDBG
- ▶ Exceptions:
 - 6 factors similar to CDBG
 - “open competitive bidding” not one of the HOME factors